

Nos. 1-13-1567 & 1-13-1572 (cons.)

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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In the Interest of:	)	Appeal from the Circuit Court of
DIANA A.,	)	Cook County, Illinois
	)	
Minor-Respondent-Appellant.	)	
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	No. 12 JA 00049
	)	
Petitioner,	)	
	)	
v.	)	Honorable Demetrios Kottaras,
	)	Judge Presiding.
	)	
WAFAA K. and ABDUL K.,	)	
	)	
Respondents-Appellees.)	)	

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Justice Simon delivered the judgment of the court.  
Presiding Justice Quinn and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Circuit court's adjudication of abuse or neglect for lack of care, injurious environment, physical abuse, substantial risk/physical injury, and excessive corporal punishment affirmed as it was not against the manifest weight of the evidence where father provided no argument concerning the findings on certain grounds and the court heard testimony of the minor child and other witnesses and weighed their credibility in making its findings of abuse and neglect. As father failed to advance any argument on

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certain findings of neglect and we cannot find any issue of arguable merit on appeal for mother, we grant counsel's motion to withdraw and affirm judgment as to mother.

¶ 2 In this consolidated appeal, respondents Wafaa K. (mother) and Abdul K. (father) appeal from orders of the circuit court of Cook County on the petition for the adjudication of wardship alleging their minor child Diana A. was abused, neglected or dependent. Father challenges only the adjudicatory order of the circuit court finding abuse or neglect for lack of care, injurious environment, physical abuse, substantial risk/physical injury, and excessive corporal punishment. Father contends the judgment was against the manifest weight of the evidence because Diana's allegations were inconsistent, contradicted and unbelievable and the parents were simply providing structure and discipline for a sexually active and rebellious daughter. The court-appointed attorney for mother, meanwhile has filed a motion for leave to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), based on his determination that mother has no meritorious argument on appeal. For the following reasons, we grant the motion of mother's attorney for leave to withdraw as counsel and affirm the judgment as to both mother and father.

¶ 3 I. BACKGROUND

¶ 4 On January 12, 2002, the State filed a petition for adjudication of wardship of Diana pursuant to the Juvenile Court Act (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)). The State alleged under sections 2-3(1) (a) & (b) and 2-3(2) (I) & (ii) of the Act (705 ILCS 405/2-3(1) (a) & (b) and 2-3(2) (I) & (ii) (West 2012)) that Diana was neglected, her environment was injurious to her welfare, she suffered physical harm by her father, had a substantial risk of physical injury, and her parents inflicted excessive corporal punishment. The State alleged that: father beat Diana with a belt on or about October 14, 2011, causing bruising to her arms and back; on or

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about November 16, 2011, father beat Diana and broke her arm by throwing a chair at her; father had a history of abusive behavior; father and mother were attempting to force Diana into an arranged marriage; and neither father or mother had created a care plan for Diana. The State also filed a motion for temporary custody of Diana because she had no place to live as her parents had left the state of Illinois. On that same date, the circuit court granted temporary custody of Diana to the Department of Children and Family Services (DCFS) Guardianship Administrator.

¶ 5 The matter advanced to an adjudicatory hearing. Testimony was presented over several days between December 7, 2012, and March 18, 2013. The State and guardian *ad litem* asked for findings on all five grounds asserted. Father and mother asked for a finding of no-fault dependency.

¶ 6 The parties presented documentary evidence and testimony of numerous witnesses in support of their positions. The State presented the testimony of Diana, DCFS child welfare advanced specialist Melody Johnson, DCFS child protection specialist Deborah Armand, Mather High School (Mather) dean of students Beth Jackowski, Mather science teacher Matthew Myers, and Mather social worker Benjamin De La Torre. Mother and father did not appear at the hearing, but counsel presented the testimony of Diana's older sisters Rina and Rana in support of their case.

¶ 7 The evidence showed that Diana was born in Iraq in 1996 and her family moved to the United States in 2006. The family practices Islam and observes Islamic traditions, including traditional garments such as the hijab for women. Diana had difficulties in school because of bullying and teasing based on the way she dressed and other differences with the general student

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population. Diana started attending Mather as a freshman in the 2010-11 school year and by all accounts was an intelligent and good student. Diana continued to have issues with bullying and making friends; however, at some point during her freshman year, Diana met "Breeze," a 16 year-old male student at Senn High School and the two began dating.

¶ 8 Diana testified that her parents, particularly her father, were strict and she began having problems at home in March 2011. Diana was caught sneaking out of her house by police and returned to her home. She testified that her father did not believe her story that she was just sitting on steps outside and got angry at her perceived lying and because she was not wearing her hijab outside. He slapped her, threw her younger brother's toys at her and threatened to shave her hair. Diana testified that after this, there were tensions in the house. She had to stay in her room, out of her father's sight, and often could not eat with the family, only eating what was leftover from dinner, which occasionally was nothing.

¶ 9 Diana was again caught sneaking out of the house in May 2011. She had snuck out to see Breeze, but did not tell her father this because she was afraid, so she told him that she was at a friend's house. In response, father took Diana to Mather the next day to try and find out information about her friend. On the drive to school, father threatened Diana that he would kill her in different ways and make it look like suicide. When they arrived at the school, Diana reported to the police officer at the school and Jackowski that her father abused her and wanted to kill her. Jackowski contacted DCFS and an investigator came to the school.

¶ 10 Despite the allegations, Diana said that she thought her father would not hurt her again and she would go home; however, the police officer drove Diana to Swedish Covenant Hospital

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to be examined for injuries. Mother drove separately. At the hospital, mother requested that Diana be examined to determine if she had been raped or had willingly had sex. Diana refused and returned home.

¶ 11 Diana testified that her home life worsened after this incident. While completing housework one day Diana emptied a bucket of water outside and her father got upset because she went outside without wearing her hijab. He beat her and cut her hair. In another incident, father called the police and said he did not want her home and told them she had run away and was not listening to her parents. The police referred father to DCFS and he called them, but they indicated they would not lock up Diana.

¶ 12 At some point in July 2011, mother returned from a trip to Iraq and informed Diana that she would return to Iraq some day to marry her cousin. Diana had no interest in marrying her cousin, not only because he was a relative who was 8-10 years older than her, but also because she had a boyfriend. Despite this, she was forced to talk with her cousin over the Internet. She testified that if she refused, her father would hit her.

¶ 13 In October 2011, Diana was wearing leggings after changing into them at school. She was not allowed to wear leggings and her father caught her wearing them when he picked her up from school. He beat her with a belt and hit her in the face with his hand when they returned home. Diana also testified to other violent arguments during this time.

¶ 14 The major incident occurred in November 2011 when Diana was sleeping and her cousin came online. Diana was slow to wake up and talk to her cousin so her father became upset, beat her and threw a chair at her. Diana blocked the chair with her hand and ended up with a

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fractured forearm. Diana felt pain for two days before her mother took her to the hospital. At the hospital, Diana told the doctors that she fell down some stairs. She testified that her mother was present and this was the story her mother told her to tell the doctor. She testified that she was afraid her family would be split up if she told the truth and did not want anything to happen to her father, the family's sole source of support.

¶ 15 Diana's parents kept her home from school, but Jackowski called their home. The next day, father and mother sent Diana to school and Diana told Jackowski what her parents had told her to say. Jackowski called DCFS and Diana again repeated what her parents told her to say. Diana testified that she told her story in a tone that she hoped would signal that she was not telling the truth. Diana testified that she was afraid to return home and she ran away.

¶ 16 Diana secretly stayed in Breeze's bedroom for a couple nights, spent a couple nights walking around, stopping at bus stops and going into alleys to avoid the police, and then was able to stay at Breeze's sister's apartment when she moved in with a friend. Diana stayed with Breeze's sister until early January 2012 when she went to a shelter. On January 5, 2012, Diana sent a letter to her freshman biology teacher, Mr. Myers, to let him know she was alright and seeking his advice.

¶ 17 She did not hear back from Myers so when Diana returned to school on January 12, 2012, she arrived with two bags of clothing and talked with Jackowski. Diana explained that this time she was telling Jackowski the truth about everything and explained how her father beat her and broke her arm. Diana testified that she did not want to go home anymore and had heard from friends that her family had moved to Michigan because Diana had shamed them. Diana admitted

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that she had her father's phone number, but never called him.

¶ 18 Johnson received the DCFS hotline call and interviewed Diana. Diana told her that she was at a shelter because she had been abandoned by her family. Diana told Johnson about the events as explained above and how her father had beaten her. She explained to Johnson that she had lied to the doctors, police, DCFS and school staff because her parents had told her to lie and also because she was afraid her family would be split up.

¶ 19 Armand also interviewed Diana on January 12, 2012. Armand reviewed the past reports from various DCFS employees concerning Diana that resulted in unfounded findings. Diana told Armand that she had been on the run since November and that she left because her father had beaten her and broken her wrist. Diana told Armand that she wanted to go to a shelter. Armand indicated that Diana gave very little eye contact and she did not believe she was being entirely truthful.

¶ 20 Armand interviewed father and he denied abusing Diana. He stated that he did not arrange a marriage and that Diana broke her wrist sneaking out and walking down stairs wearing high heels. Armand testified that he later told her Diana broke her arm while playing with her siblings. Father told Armand that Diana was a chronic runaway and had stolen money and jewelry from the home. Father also stated that he received a text from a "Mike" and believed that is who Diana had been staying with, he also believed that this man broke into his home and tried to choke his wife one night.

¶ 21 Diana's two older sisters, Rina and Rana, testified on behalf of their parents. Both sisters rejected the idea that their father or mother hit them or Diana. Rana, the eldest, testified that she

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married by choice and lived with her husband. She spent most of her days at the family home and regularly saw Diana. Rana testified that her mother told her in mid-August that she had been sleeping on the couch to try and stop Diana from running away when Diana's boyfriend broke in and choked mother, trying to kill her. Mother told Rana that Diana promised that would not happen again so she did not tell father.

¶ 22 Rana was aware that Diana was having problems in school because she attended parent-teacher meetings as a translator for her parents. She testified to Diana's poor behavior at home since March 2011. Rana testified that Diana got into a physical fight with her brother in October 2011 and her brother hit Diana in the back. In November 2011, during a family celebration of the Muslim holiday Eid, Diana was wearing high heels and fell down stairs.

¶ 23 Rina also denied that her parents had arranged a marriage for Diana. Rina testified that she called the police in August when Diana's boyfriend tried to choke her mother. She also corroborated Rana's testimony that the family was outside celebrating Eid when Diana came outside and fell down the stairs because she was wearing high heels. Rina testified that father never hit the children and claimed that father actually spoiled Diana because she was the youngest daughter.

¶ 24 Following closing arguments, the circuit court entered an oral order granting the State's petition on all grounds. The court noted there were discrepancies and inconsistencies in Diana's testimony, but ultimately believed her testimony, finding her delays in reporting the abuse by her father were founded in both her fear of reprisal, as well as what effect that could have on her family and her father as the sole source of family income. In addition, the court noted that father



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and mother had moved the family to Michigan without notice to Diana or providing for her care. In its March 18, 2013, written order, the circuit court found Diana abused or neglected by father and mother under sections 2-3(1)(a) & (b) and 2-3(2)(I), (ii) & (v) of the Act (705 ILCS 405/2-3(1)(a) & (b), 2-3(2)(I), (ii) & (v) (West 2012)), because "minor sustained a broken arm as a result of father throwing chair at minor. Minor also sustained injuries to her back and hand. Natural parents moved to Michigan without leaving an adequate care plan." The matter advanced to a dispositional hearing. This appeal challenges only the adjudicatory order finding abuse or neglect.

¶ 25

## II. ANALYSIS

¶ 26

### A. Manifest Weight of the Evidence

¶ 27 The sole issue asserted by father on appeal is that the circuit court's adjudicatory findings were against the manifest weight of the evidence. Father does not challenge the dispositional order of the circuit court finding Diana a ward of the court and that mother and father are unable and unwilling to care for Diana. In considering a petition under the Act, the paramount consideration is the best interests of the child. *In re K.G.*, 288 Ill. App. 3d 728, 734-35 (1997). Cases involving allegations of neglect and abuse are necessarily fact-driven and must be decided on the unique circumstances of each case. The State carries the burden of proving such allegations by a preponderance of the evidence - that they are more probably true than not. *In re Arthur H., Jr.*, 212 Ill. 2d 441, 463-64 (2004). Our supreme court has explained the standard of review for these cases, and its rationale, as follows:

"Given the varying circumstances of neglect cases, the trial court must

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have broad discretion to reach a just determination. [Citation.] Only where there has been an abuse of discretion or the judgment has been against the manifest weight of the evidence should the decision be disturbed on appeal. The delicacy and difficulty of child-custody and child-neglect cases justify the burden of responsibility placed on the trial court and the ensuing deference which must be given to the trial court. The trial court has the opportunity to observe the demeanor and conduct of parties and witnesses. 'We recognize \* \* \* that in viewing a judgment of a trial court respectful weight must be given the consideration that the trial court had the opportunity of observing the witnesses.' [Citation.] This is a vital factor in evaluating the correctness of [the trial judge's] determination. We should not disturb his findings unless they are palpably against the weight of the evidence." *In re Stilley*, 66 Ill. 2d 515, 520 (1977).

¶ 28 As noted above, Diana was found neglected or abused under sections 2-3(1)(a) & (b) and 2-3(2)(I), (ii) & (v) of the Act (705 ILCS 405/2-3(1)(a) & (b), 2-3(2)(I), (ii) & (v) (West 2012)). Proof of the abuse, neglect or dependency of the other minor is sufficient to establish a *prima facie* case of neglect based on injurious environment. However, this is not a *per se* rule, rather this presumption is rebuttable by the respondent. *In re Edricka C.*, 276 Ill. App. 3d 18, 28 (1995). Father argues that the State failed to present sufficient evidence and the rebuttal witnesses fully countered the State's case. Therefore, he concludes that the circuit court's adjudicatory order is against the manifest weight of the evidence.

¶ 29 First, as argued by the State, father does not present argument that the circuit court erred

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in finding Diana abused or neglected with respect to all of the alleged grounds. For example, father does not dispute or argue that the neglect finding based on the family's failure to develop an adequate care plan when it moved to Michigan without Diana. The Act provides a list of examples of neglected or abused minors, listed in the disjunctive, and proof of abuse or neglect may be based on evidence supporting any of the statutory grounds. Father's failure to challenge and offer any citation to legal authority in argument against certain findings constitutes forfeiture of those arguments pursuant to Supreme Court Rule 341(h)(7). See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)), *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010). As such, the circuit court's adjudicatory order finding Diana abused or neglected is not against the manifest weight of the evidence.

¶ 30 Waiver and forfeiture notwithstanding, father's argument in his brief rests centrally on the credibility of Diana and his contention that her "story does not hold water." Father points to Diana's rebellious acts and the fact that any parent would be upset if his daughter was sneaking out of the house to have sexual intercourse at 15 years of age. He argues that Diana needed to be strictly punished because of this dangerous and insolent behavior. However, as highlighted above, credibility determinations, particularly under the context of an adjudicatory hearing in an abuse or neglect case, falls within the discretion of the circuit court as the trier of fact.

¶ 31 Father argues that this case is similar to that in *In re S.M.*, 309 Ill. App. 3d 702 (2000). As in this case, the 13-year-old minor in *S.M.* was disobeying household rules, staying out late, refusing to stay home, engaging in sexual intercourse, and having problems at school. *Id.* at 703-04. The State filed a petition for wardship based on allegations of an injurious environment and

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excessive corporal punishment and at the first appearance, the circuit court ordered the family to continue counseling and the minor to obey rules, not run away from home, and attend school. *Id.* at 703.

¶ 32 At the adjudicatory hearing, the parents expressed frustration with the minor and claimed that corporal punishment was the last and necessary step to discipline and teach the minor what was best. The minor had run away again and continued to break the rules and misbehave. Stepfather admitted to hitting the minor with a belt and the mother admitted that she did not attempt to intervene or stop the beating. The DCFS investigator observed bruising on the minor's arms and upper thighs, but no medical evidence was presented. *Id.* at 704. The circuit court found the minor to be neglected and placed her in the custody and guardianship of DCFS. *Id.*

¶ 33 On appeal, the fourth district of this court reversed the finding of neglect. The court noted the ongoing troubles with the minor and failure of all means of discipline short of corporal punishment. *Id.* at 705. The court noted that the minor even "flaunted the authority of the court," by refusing to comply with the circuit court's initial order and continuing to run away, skip school and violate rules. *Id.* at 706. The court further noted that no medical evidence was presented to document the physical harm suffered by the minor. In addition, the mother and stepfather attended the hearings and "clearly wanted what was best for S.M." *Id.* Therefore, while not condoning such punishment, the court found the finding of neglect against the manifest weight of the evidence. *Id.*

¶ 34 Diana does share similar acts of rebellion with the minor child in *S.M.* However, unlike *S.M.*, in this case Diana did not violate a specific court order, medical evidence of bodily harm

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resulting from father's abuse was presented and, unlike the mother and stepfather in *S.M.*, father and mother not only did not attend the adjudicatory hearing, they moved to Michigan without Diana and did not prepare a care plan for her. The best interests of the child are the paramount consideration and the trial court explicitly founded its conclusion on that consideration in finding Diana abused and neglected. The circuit court admitted that Diana's testimony had some inconsistencies and lapses, but explicitly found her story credible. Based on the evidence presented this conclusion was not against the manifest weight of the evidence and we affirm the circuit court's adjudicatory findings.

¶ 35

#### B. Motion to Withdraw

¶ 36 Turning to mother's appeal, her court-appointed attorney filed a motion requesting leave to withdraw as appellate counsel based on his conclusion that there are no meritorious issues on appeal. The motion was made pursuant to *Anders v. California*, 386 U.S. 738 (1967), and was accompanied with a brief. Copies of the brief were sent to mother with a letter advising her of her opportunity to respond and explain why she thought there are issues of merit in her appeal. Mother has not filed any response.

¶ 37 In accordance with the mandate in *Anders*, we have reviewed the record in this case and mother's counsel's brief. We agree there are no issues of arguable merit to be asserted on appeal on behalf of mother. Accordingly, we grant counsel's motion to withdraw, and affirm the judgment of the circuit court of Cook County as to Wafaa K.

¶ 38

#### III. CONCLUSION

¶ 39 Accordingly, for the aforementioned reasons, counsel's motion to withdraw as counsel is

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granted and the decision of the trial court is affirmed.

¶ 40 Affirmed.